

shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2570.119 through 2570.121.

#### § 2570.119 Review by the Secretary.

(a) The Secretary may review a decision of an administrative law judge. Such a review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such decision. In all other cases, the decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of a notice of appeal, the Secretary shall request the Chief Administrative Law Judge to submit to him or her a copy of the entire record before the administrative law judge.

#### § 2570.120 Scope of review.

The review of the Secretary shall not be a *de novo* proceeding but rather a review of the record established before the administrative law judge. There shall be no opportunity for oral argument.

#### § 2570.121 Procedures for review by the Secretary.

(a) Upon receipt of the notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in his or her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be final agency action within the meaning of 5 U.S.C. 704.

### Subpart G—Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(7)

SOURCE: 68 FR 3738, Jan. 24, 2003, unless otherwise noted.

#### § 2570.130 Scope of rules.

The rules of practice set forth in this subpart are applicable to “502(c)(7) civil penalty proceedings” (as defined in § 2570.131(n) of this subpart) under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act). The rules of procedure for administrative hearings published by the Department’s Office of Administrative Law Judges at Part 18 of this title will apply to matters arising under ERISA section 502(c)(7) except as modified by this subpart. These proceedings shall be conducted as expeditiously as possible, and the parties shall make every effort to avoid delay at each stage of the proceedings.

#### § 2570.131 Definitions.

For 502(c)(7) civil penalty proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to the formulation of a final order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to § 2560.502c-7(g) of this chapter;

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means any written document containing a specified proposed remedy or other relief acceptable to the Department and consenting parties;

(f) *ERISA* means the Employee Retirement Income Security Act of 1974, as amended;

(g) *Final order* means the final decision or action of the Department of